

## **RESOLUTION NO. 09-20**

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AUTHORIZING THE SALE AND ISSUANCE OF NOT TO EXCEED \$9,000,000 AGGREGATE PRINCIPAL AMOUNT OF CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK VARIABLE RATE REVENUE BONDS (THE BAY INSTITUTE AQUARIUM FOUNDATION PROJECT), SERIES 2009 TO PROVIDE FINANCIAL ASSISTANCE FOR THE ACQUISITION OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES, PROVIDING THE TERMS AND CONDITIONS OF THE SALE AND ISSUANCE OF SAID BONDS AND OTHER MATTERS RELATING THERETO, AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS HEREIN SPECIFIED.**

**WHEREAS**, the California Infrastructure and Economic Development Bank (the "Issuer") was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.) (the "Act"), for the purpose of promoting economic development; and

**WHEREAS**, the Issuer is authorized to issue tax-exempt revenue bonds pursuant to the Act to provide financing for economic development facilities (as defined in the Act) located in the State of California (the "State"); and

**WHEREAS**, The Bay Institute Aquarium Foundation, a California nonprofit public benefit corporation (the "Borrower"), has submitted an application to the Issuer for assistance in financing the acquisition of certain real property and improvements located at Pier 39, San Francisco, California including a 65,000 square foot aquarium, tanks holding more than 700,000 gallons of filtered bay water and 300 feet of clear acrylic tunnels, together with various offices and support facilities (the "Project"), and paying certain costs of the Project, including funding a debt service reserve fund in connection with the Bonds; and certain expenses incurred in connection with the issuance of the Bonds; and

**WHEREAS**, the Borrower has represented that it intends to use the acquired facilities (the "Project Facilities") as an interpretive center to educate the community about conservation of the San Francisco Bay and its surrounding waters by focusing on inquiry-based hand-on learning experiences for children and adults, which operation is consistent with the definition of an economic development facility under the Act; and

**WHEREAS**, for these purposes, the Borrower has requested the Issuer to (a) authorize the issuance of its Variable Rate Revenue Bonds (The Bay Institute Aquarium Foundation Project), Series 2009 (the "Bonds"), in an aggregate principal amount not to exceed \$9,000,000, (b) provide for the sale of the Bonds, (c) provide for the loan of proceeds of the sale of the Bonds to the Borrower to finance and refinance a portion of the costs of the Project; (d) provide for the

payment of the principal of, premium, if any, and interest on the Bonds with revenues derived from the Borrower's repayment of that loan; and (e) take and authorize certain other actions in connection with the foregoing; and

**WHEREAS**, the Borrower desires that the Bonds be secured by an irrevocable direct-pay letter of credit to be issued by Pacific Capital Bank, National Association and supported by a standby letter of credit issued by the Federal Home Loan Bank of San Francisco (jointly referred to herein as the "Letters of Credit"), and the security of the Letters of Credit will be for the benefit of the bondholders; and

**WHEREAS**, the Issuer may not issue the Bonds to assist in financing the Project until the Board of Directors of the Issuer makes certain determinations relating to the Project as required by the Act; and

**WHEREAS**, there are now on file with the Secretary of the Board the following:

(1) a proposed form of an indenture of trust between the Issuer and U.S. Bank National Association as the trustee for the holders of the Bonds (the "Trustee") providing for the authorization and issuance of the Bonds to be dated the date of delivery thereof (the "Indenture");

(2) a proposed form of a loan agreement between the Issuer and the Borrower, providing for the loan of the proceeds of the Bonds to the Borrower (the "Loan Agreement");

(3) a proposed form of a tax regulatory agreement and no arbitrage certificate between the Issuer and the Borrower, governing, among other things, the use and investment of the proceeds of the Bonds for the purpose of complying with federal tax law and regulations pertaining to the Bonds (the "Tax Certificate");

(4) a proposed form of a bond purchase contract among the Issuer, the Treasurer of the State as agent for sale of the Bonds, Nollenberger Capital Partners, Inc., as underwriter (the "Underwriter") and the Borrower providing for the sale of the Bonds (the "Bond Purchase Contract"); and

(5) A proposed form of the official statement (the "Official Statement") to be used by the Underwriter in connection with the offering and sale of the Bonds.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the California Infrastructure and Economic Development Bank (the "Board"), as follows:

**Section 1.** The Issuer authorizes and approves the loan of the proceeds of the Bonds to the Borrower in order to finance or refinance a portion of the cost of the Project (including the payment of costs of issuance in connection with the Bonds and the funding of a reserve fund) pursuant to the terms and provisions of the Loan Agreement. The proposed form of the Loan Agreement on file with the Secretary of the Board is hereby approved and the Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone (each an "Authorized Signatory"), is hereby authorized and empowered to execute by manual or facsimile signature and deliver the Loan Agreement in substantially said form, with such changes and

insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with the advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof. The Secretary of the Board is authorized to attest to the Issuer's execution of the Loan Agreement.

**Section 2.** The proposed form of the Indenture on file with the Secretary of the Board is hereby approved and the Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone, is hereby authorized and empowered to execute by manual or facsimile signature and deliver to the Trustee the Indenture in substantially said form, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with the advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof. The Secretary of the Board is authorized to attest to the Issuer's execution of the Indenture.

**Section 3.** The proposed form of the Bond Purchase Contract on file with the Secretary of the Board is hereby approved and the Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone, is hereby authorized and empowered to execute by manual or facsimile signature and deliver the Bond Purchase Contract in substantially said form, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with the advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof. The Treasurer of the State of California, as agent for sale of the Issuer's bonds, is hereby requested to sell the Bonds at negotiated sale, at such prices and at such initial interest rates as he may determine in accordance with the Indenture. Notwithstanding Section 63074(d) of the Act to the contrary, such sale may take place at any time within one hundred eighty (180) days of the adoption of this Resolution or at such later date not later than the date three hundred sixty (360) days of the adoption of this Resolution as approved by the Executive Director of the Issuer.

**Section 4.** The form of the Official Statement on file with the Secretary of the Board is hereby approved. The Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone, is hereby authorized, for and in the name and on behalf of the Issuer to execute the Official Statement in substantially said form, with such changes and insertions therein as may be necessary or convenient to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with the advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof. The Underwriter is hereby authorized to deliver copies of the Official Statement in connection with the sale of the Bonds.

**Section 5.** The proposed form of the Tax Certificate on file with the Secretary of the Board is hereby approved and the Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone, is hereby authorized and empowered to execute by manual or facsimile signature and deliver the Tax Certificate in substantially said form, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with the advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof.

**Section 6.** The Issuer approves the issuance on a tax-exempt basis of the Bonds for the Project in accordance with the terms of and to be secured by the Indenture in an aggregate principal amount not to exceed the lesser of \$9,000,000 or the amount of principal secured by the Letters of Credit. Payment of the principal of, premium, if any, and the interest on, the Bonds shall be made solely from the revenues to be received by the Issuer pursuant to the Loan Agreement and the Indenture, and said Bonds shall not be deemed to constitute a debt or liability of the Issuer (except to the limited extent provided in the Indenture) or the State of California. The Chair of the Issuer, the Chair's designee, or the Executive Director of the Issuer, each acting alone, is hereby authorized and directed to execute, in the name and on behalf of the Issuer, by manual or facsimile signature, the Bonds, in an aggregate principal amount not to exceed \$9,000,000 in accordance with the Indenture and in the form set forth in the Indenture which shall be substantially similar to the form set forth in the proposed form of Indenture on file with the Secretary of the Board, with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this Resolution and as are approved by the Authorized Signatory with advice of counsel to the Issuer, such approval to be conclusively evidenced by the delivery thereof. The Bonds shall be dated the date of their issuance and shall be paid in lawful money of the United States at the time or times and place or places provided in the Indenture. The Bonds shall be in the form and the denominations as provided in the Indenture, mature on the date or dates provided in the Indenture which shall be not later than sixteen years from the date of issuance thereof, be subject to redemption as provided in the Indenture, shall carry the registration privileges provided in the Indenture and shall bear interest at a variable rate or rates to be determined in accordance with the Indenture, which rates shall not to exceed twelve (12%) per annum.

**Section 7.** The Bonds, when so executed, shall be delivered to the Trustee for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate and register the Bonds so delivered by executing the appropriate Certificate of Authentication and Registration appearing thereon, and to deliver the Bonds, when duly executed, authenticated and registered, to the Underwriter in accordance with written instructions executed on behalf of the Issuer by the Chair of the Board, the Chair's designee or the Executive Director of the Issuer which instructions said officer is hereby authorized and directed, for and in the name of and on behalf of the Issuer, to execute and to deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to the Underwriter upon payment of the purchase price therefor.

**Section 8.** Pursuant to Section 63046 and 63047 of the Act, and based upon representations made by the Borrower, the Board of Directors of the Issuer hereby finds and determines that:

- (a) the Project is located in the State of California;
- (b) the Borrower is capable of meeting its obligations incurred under the Loan Agreement;
- (c) the payments the Borrower is required to make under the Loan Agreement are adequate to pay all expenses of the Issuer in connection with the issuance and payment of the Bonds and to make payments on the Bonds;

(d) the issuance of the Bonds is an appropriate financing mechanism for the Project; and

(e) the Project is consistent with any existing local or regional comprehensive plans.

The finding in subsection (b) above, as to the Borrower's payment obligations under the Loan Agreement, is based on the requirement of the Issuer that the Bonds will be secured by the Letters of Credit which together will support a rating on the Bonds of at least "A3" from Moody's Investors Service, or "A-" from Standard & Poor's or Fitch Ratings.

**Section 9.** Based on the information provided and representations made by the Borrower the Board hereby finds and determines that the Project demonstrates clear evidence of a defined public benefit in that the Project is expected to provide interpretive center to educate the community about conservation of the San Francisco Bay and its surrounding waters.

**Section 10.** The Chair of the Board, the Chair's designee or the Executive Director of the Issuer, each acting alone, is hereby authorized to execute all documents, certificates and instruments necessary or appropriate to this transaction and the issuance of the Bonds.

**Section 11.** All actions heretofore taken by the officers and employees of the Issuer with respect to the approval, issuance and sale of the Bonds are hereby approved, confirmed and ratified. The officers of the Issuer and their authorized designees, deputies, agents and counsel are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all certificates and documents which they, their counsel or bond counsel may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this Resolution, provided that no such document or certificate shall create any obligation or liability of the Issuer other than with respect to the revenues and assets derived from the proceeds of the Bonds or otherwise securing the Bonds under the financing documents described and authorized herein.

**Section 12.** This Resolution shall take effect from and after its adoption.


PASSED, APPROVED AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on May 19, 2009, by the following vote:

AYES: Bonner, Sheehy, Lujano, Aguiar, Rice

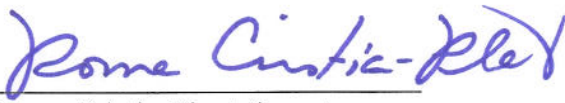
NOES:

ABSTAIN:

ABSENT:

By   
Stanton C. Hazelroth, Executive Director

Attest:

By   
Roma Cristia-Plant, Secretary